UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

WELDON, WILLIAMS & LICK, INC.

and **Case 26-CA-21926**

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, AFL-CIO, CLC

***Rosalind F. Eddins, Atty,* of Memphis, Tennessee, for the General Counsel**
***John D. Davis, Atty,* of Little Rock, Arkansas, for the Respondent**
***Thomas E. Allison, Atty,* of Chicago, Illinois, for the Charging Party**

DECISION

Statement of the Case

Mary Miller Cracraft, Administrative Law Judge. On November 29, 2004,[1] Graphic Communications International Union, AFL-CIO, CLC (the Union or Charging Party)[2] filed an unfair labor practice charge against Weldon, Williams & Lick, Inc. (Respondent). Pursuant to this charge, on May 26, 2005, the Acting Regional Director for Region 26 of the NLRB issued a complaint and notice of hearing alleging that Respondent violated Section 8(a)(1) of the National Labor Relations Act[3] by telling employees that it would not let the Union in, and Section 8(a)(1) and (3)[4] by discharging its employee Dale Morfey because he supported the Union and to discourage other employees from supporting the Union or acting concertedly with other employees. On August 1 and 2, 2005, these allegations were tried before me in Ft. Smith, Arkansas.

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[1] All dates are in 2004 unless otherwise referenced.

[2] The name of the Union was amended at trial from Graphic Communications International Union, AFL-CIO, CLC to Graphic Communications Conference Brotherhood of Teamsters.

[3] Section 8(a)(1) of the National Labor Relations Act, 29 U.S.C. Sec. 158(a)(1), provides "It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [of the Act]." Section 7 sets forth the rights of employees, including, inter alia, the right to form, join, or assist labor organizations.

[4] Section 8(a)(3) of the Act, 29 U.S.C. Sec. 158(a)(3), prohibits discrimination which encourages or discourages membership in any labor organization.

On the entire record,[5] including my observation of the demeanor of the witnesses,[6] and after considering the briefs filed by counsel for the General Counsel, counsel for the Charging Party, and counsel for the Respondent, I make the following

Findings of Fact

A. Jurisdiction and Labor Organization Status

Respondent is a commercial printer with a facility in Fort Smith, Arkansas. During the 12-month period ending April 30, 2005, Respondent sold and shipped goods valued in excess of $50,000 and purchased and received goods valued in excess of $50,000 directly from points outside the State of Arkansas. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

B. Background

Founded in 1898, Respondent provides custom security printing to firms throughout the United States. Respondent employs about 300 employees at its Ft. Smith, Arkansas facility. Jim Walcott, great grandson of one of the founders, has been president of Respondent for about 20 years. John Boyett is vice-president of manufacturing. About 14 or 15 supervisors report to Boyett. James L. Houston is the human resources manager. Richard Todd Friday is creative director.

In September, Respondent's employee handbook was revised. All employees were provided a copy of the newly revised handbook in late September. One change in the new handbook was implementation of a certified random drug testing program, which was to be effective January 1, 2005. Each employee was required to sign an acknowledgement form signifying receipt of the new handbook and agreement to abide by the new rules. The rules in the revised handbook apply equally to supervisors and rank and file employees.

C. Alleged Section 8(a)(1) and (3) Violations

1. Facts

Respondent's employees have never been represented by a union. Respondent's employee handbook states,

[5] On September 15, 2005, the Union filed a Motion to Correct the Transcript. As the motion was unopposed, the motion is hereby granted and received in the record as Judge's exhibit one.

[6] Credibility resolutions have been made based upon witness demeanor, the weight of respective evidence, established or omitted facts, apparent probability, and reasonable inferences drawn from the record as a whole. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

> Weldon, Williams & Lick, Inc., believes in a Union-free environment and is opposed to the unionization of its employees and will utilize all legal and proper means to resist union representation. It is our opinion that the success of this company is dependent upon the skill, effort and dedication of its employees working together as a team.

In opposing unionization, Respondent endorses a loyal, family-like environment. The preface of the employee handbook contains a statement from the founder, C.A. Lick, endorsed by every succeeding president, stating:

> [In large families] black sheep are occasionally found. They are a discredit to a family and a business. If a helping hand fails to guide them along the right path, they are usually expelled from the family circle and are shunned by those who strive to preserve the better ways of life.

Dale Morfey worked for Respondent for over 27 years. For the past 16 years, he worked in Respondent's graphic design department. Respondent's supervisors admitted that Morfey was an exemplary employee. Jim Walcott, company president, admitted that Morfey turned out great work, was technically competent, intelligent and articulate and always conducted himself in a professional manner. James Houston, director of human resources, admitted that Morfey was a "good and valuable employee." Todd Friday, Morfey's supervisor, testified that Morfey had not been disciplined in the ten years that Friday worked with Morfey.

In late September, Respondent distributed its new employee handbook, to be effective January 1, 2005. Each employee was asked to sign an acknowledgement stating that he agreed "to read and abide by the policies set forth in the Handbook." Morfey told Friday that he believed the random drug testing proposed by Respondent was invasive because it required employees to give urine samples in the presence of a third party, perhaps of the opposite sex, without any requirement of reasonable cause. Morfey expressed his concerns with Friday prior to taking a leave in October, 2004. Morfey was on a leave of absence from October 8 to November 4, so that he could campaign for the United States Congress.

In his discussions with Friday, Morfey expressed his belief that random testing was "lazy" and "cowardly". Morfey said the policy was lazy because supervisors were not required to look for signs of drug use. He stated that the policy was cowardly because instead of using a probable cause, based on suspicious behavior, past history or attendance problems, the policy was simply lumping all employees together. On October 4, Morfey sent an e-mail to company president Jim Walcott stating his belief that the random testing program would be seen as a "personal insult" and attack upon the employees' "personal honor and dignity." Morfey suggested that testing be based on reasonable cause or suspicion. Walcott responded that Respondent's customers required a drug-free workplace and that he did not believe the program would lead to body searches. Shortly before Morfey took his leave to run for Congress, Friday gave him a new employee handbook and a receipt for Morfey to sign. Morfey told Friday that he wanted an attorney or civil liberties organization to review the drug policy. Morfey wrote "For Receipt Only" on the receipt and returned it to Friday.

Morfey returned to work on November 3, the day after the election. On November 4, at the beginning of Morfey's shift, Friday informed Morfey that James Houston, human resources director, would not accept Morfey's "For Receipt Only" notation on the handbook receipt and that Morfey would have to sign a receipt agreeing to comply with the handbook. Morfey requested a meeting with Houston and Friday said he would set up such a meeting.

At approximately nine o'clock in the morning, Friday accompanied Morfey to Houston's small office. Morfey walked into Houston's office first and sat in a chair facing Houston. Friday sat in an extra chair brought into the office with his back to the door. Houston told Morfey, "Dale, we've got a problem here. What do we have to do to solve it." Morfey answered that he was very concerned about the drug test. Morfey argued that the testing was grossly humiliating and degrading to employees. Morfey explained that based on his research, the urine specimens had to be observed. Houston answered that the test had been fully researched and was legal. Houston told Morfey that Respondent fully intended to implement its drug testing policy and that if Morfey did not like it, he could work elsewhere. Morfey objected to being dismissed in that manner. He stated:

> James, you've got grandmothers. You've got mothers. And you have daughters working here in the plant. Do you think it's right to force them into that situation, that they are going to do the things that I described before -- exposing body parts and urinating in a cup in front of a young male technician? Do you think that's right?

When Houston answered "yes", Morfey stood up to leave and "calm down." As Morfey stood up, he cursed for the first time in his 27-year career with Respondent.[7] Morfey said, "This is f-----g crazy. This is ridiculous," and attempted to leave the room. However, Friday's chair was blocking the exit and the door bounced off the back of Friday's chair. Morfey opened the door a second time and attempted to squeeze through but could not fit through the opening. Friday refused to move his chair.[8] Houston and Friday then urged Morfey to sit and calm down. Friday said, "Dale, you're a good employee. Just sit down and don't do something you might regret." Morfey sat down and the meeting resumed. Houston joked that Morfey put a hole in the door. Morfey could not see any hole in the door and asked, "Where's the hole?"[9]

The meeting continued for another ten minutes. Morfey requested that he be allowed to have an attorney or civil liberties organization look at the drug policy. Houston asked if Morfey was calling him a coward. Morfey denied that he was calling Houston or anyone else a coward. He answered that the policy was cowardly because supervisors did not have to look for probable cause but simply lumped all employees together. Houston stated that he was responsible for the policy and asked whether Morfey was calling him a coward. Morfey just shrugged his shoulders.[10] Morfey repeated his request to have the drug policy reviewed. Houston said he would check with Walcott to see if Respondent would give Morfey 30 days to have the policy reviewed. Houston said he would try to have an answer for Morfey later that day. The meeting ended cordially and Friday moved his chair so that Morfey could leave the office.

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[7] It is undisputed that cursing is a common practice at Respondent's facility. There is a "cuss jar" in which employees caught cursing pay a small amount if caught cursing. Morfey has never been required to contribute to the cuss jar.

[8] While I find that Friday did not originally intend to block Morfey's exit from the office, clearly Friday decided not to move his chair to permit Morfey to leave the office, after everyone realized that the door was blocked. Friday admitted telling Morfey that he refused to move his chair. Morfey and Houston testified that Friday told Morfey that he would not move his chair.

[9] General Counsel offered evidence of pictures which show a slight dent in the door where the door slammed against the back of Friday's chair. There was neither evidence that the door was repaired nor evidence of what the cost of repair would be.

[10] At the trial, Houston admitted that the discussion about the policy being cowardly was "not a big issue at the time."

Neither Houston nor Friday said anything in this meeting about discipline for something that occurred in this meeting. Houston admitted that he had not considered any discipline of Morfey before the meeting, and by the end of the meeting still had not considered any type of discipline of Morfey. Morfey did not hear from Houston again that day. Morfey questioned Friday several times that day in an attempt to find out about his request to have the drug policy reviewed.

Respondent claims that after meeting with Morfey, Houston met with Walcott to discuss Morfey's desire not to sign the required receipt of the employee handbook and Morfey's request for 30 days to have the drug policy reviewed. Houston reported to Walcott what had occurred at the meeting. Houston admitted that it was not his intention to recommend discipline for Morfey. According to Houston and Walcott, Walcott immediately decided to terminate Morfey. According to Houston and Walcott, at Houston's request, Walcott agreed "to sleep on it." Although Houston is Respondent's director of human resources, there was no discussion of Respondent's progressive disciplinary system which provided for an oral warning, written warning, suspension and finally discharge.

Based on demeanor and circumstantial evidence, I do not credit Walcott's testimony. The demeanor of a witness may satisfy the trier of fact, not only that the witness' testimony is not true, but that the truth is the opposite of his story. See, *Walton Manufacturing Co. v. NLRB,* 369 U.S. 404, 408 (1962). While Houston made some significant admissions regarding his meeting with Friday and Morfey, I do not credit Houston's testimony regarding his communications with Respondent's management, particularly Walcott. I find Houston was more concerned about supporting Walcott's case against Morfey than he was interested in truthfully testifying as to the facts. Houston admitted that he was fearful of contradicting Walcott's testimony.

Walcott testified that after meeting with Houston, he met later that day with John Boyett, vice-president of manufacturing, and Tom Moreton, supervisor in the prepress department. [11] According to Walcott he had Houston report to Boyett and Moreton what had occurred between Houston, Friday and Morfey. Walcott then suggested that Morfey be terminated. Houston again suggested that Walcott "sleep on it." Walcott testified that he could not recall if he considered meeting with Morfey. He testified at the hearing that Morfey's actions were not worth investigating although he admitted that in his 27 years as company president he had never heard of Morfey cursing or engaging in any misconduct. He even admitted that he did not expect such conduct to occur again. When questioned why he did not consider a lesser form of discipline, Walcott answered "something had changed in Morfey and [Walcott] didn't feel like it was worth continuing his employment with the company." However, as noted above, Walcott did not have Morfey terminated and allegedly agreed to sleep on it. Allegedly Respondent's management agreed to discuss the matter the following day.

Boyett testified that shortly after the meeting in Walcott's office, Friday told him that he was scared to death of Morfey's actions. Friday denied this testimony. According to Friday, he was not questioned about the office incident until a meeting in Walcott's office on November 5, after Respondent became aware of Morfey's union activities.

On the evening of November 4, Morfey did some research on the Internet regarding random drug testing. Thereafter, Morfey decided to seek the assistance of a union. That same evening, Morfey submitted an electronic request for information concerning union organization

[11] Moreton is Friday's immediate supervisor.

from the Union. Then Morfey sent an e-mail to Houston and Respondent's other management officials, including Walcott and Friday, notifying them that he had contacted the Union about organizing Respondent's employees.

When Morfey returned to work on November 5, he placed a signed receipt for the employee handbook in Friday's office. However, Morfey signed the receipt with the notation "U.D." meaning "under duress." Friday took the form to Houston who accepted it and thereafter spoke with Morfey. Friday tried to reassure Morfey that the testing procedure would be proper. Morfey asked Friday if Friday had received Morfey's e-mail about union organizing. Friday said, "They are not going to let that happen. No way." Morfey replied that since Houston had emphasized the legality of the drug testing policy, Respondent should also understand that employees had the legal right to unionize. As Morfey was leaving, he stated, "Todd the next time something like that happens you better get out of my way." Friday turned his back and waved Morfey off dismissively.

Between 8:30 and 9:00 a.m. on November 5, Walcott and Houston met in Walcott's office. Walcott had already received Morfey's e-mail concerning union organization. Walcott admitted that Morfey's e-mail was "another variable in the issue." According to Walcott he told Houston that he wanted to terminate Morfey the day before and still felt he had to. However, Walcott testified, "because Morfey had mentioned the word union, I knew that there are protections afforded employees and employers when the word 'union' is mentioned." Therefore, according to Walcott, he instructed Houston to consult counsel. According to Houston he then contacted labor counsel.

Friday testified that a couple of hours after his morning conversation with Morfey, he told Boyett about Morfey's statement that the next time, "Friday better get out of Morfey's way." Boyett and Friday later reported this conversation to Houston. Boyett reported this matter to Walcott who told Boyett that they would discuss the matter after lunch.

After lunch time, Walcott testified that he convened a meeting with Boyett, Moreton, Houston and Friday. Walcott told the attendants that he wanted to terminate Morfey and asked if anyone objected. No one objected and Walcott directed Houston to compose a letter terminating Morfey's employment.

At 3:30 p.m., Walcott, in the presence of Respondent's management officials and a city police officer, handed Morfey a termination letter. Walcott then read the letter. The letter referred to the incident in Houston's office and Morfey's statement to Friday. The letter claimed Morfey stated that he was "forced" to sign a receipt for the handbook, that he would no longer work to his full potential and would not be the same employee. The letter claimed that Morfey, while wearing a gun holster, had threatened Friday. The letter concluded by stating that Morfey was terminated for damaging property and for "terroristic" threats to supervisors. At one point, Morfey interrupted and said, "Jim you know as well as I do that this is because of the Union."

General Counsel presented evidence that other employees have engaged in similar conduct but received lesser discipline. Boyett admitted that he had witnessed employees in verbal confrontations with supervisors. In those incidents Boyett administered no discipline. In one instance, Boyett improperly grabbed another employee. That employee filed a police report over Boyett's conduct. Houston investigated the matter and although he found Boyett's conduct to be "inappropriate," Houston determined that no discipline was warranted. Walcott apparently followed this recommendation without comment.

The General Counsel also presented evidence that in October 2000, an employee used profanity while shoving another employee against a wall. The employee found at fault was only given a written warning. Respondent's records show that the employee pushed the other employee over a truck. Walcott damaged his credibility by testifying that he believed Morfey's conduct in this case was worse than that physical confrontation.

The record also reveals that an angry employee confronted a supervisor in a dispute over a wage raise. The supervisor felt threatened and began wearing a panic button after the incident. Nonetheless, the employee involved was not issued any discipline.

Finally, as mentioned earlier, profanity is widespread at Respondent's facility. Respondent does not have a past practice of disciplining employees for using profanity. Friday testified that everyone in his department, with the exception of Morfey, has contributed to the cuss jar.

Respondent offered evidence that two employees were terminated for causing damage to the door of a ladies' restroom. However, Respondent's records revealed that these employees were, in fact, discharged for sexual harassment, i.e., improperly entering the women's bathroom. Respondent also introduced evidence of the discharge of an employee who was terminated for threatening a supervisor. That employee telephoned the supervisor at the supervisor's home, stated he knew where the supervisor lived and threatened to go to the supervisor's home and assault the supervisor and his family. Clearly, such conduct is not comparable to that engaged in by Morfey.

2. Analysis

a. The Independent Section 8(a)(1) Allegation

On the morning after he notified Respondent that he was going to attempt to organize the employees, Morfey asked Friday if Friday had received Morfey's e-mail about union organizing. Friday said, "They are not going to let that happen. No way." Morfey replied that since Houston had emphasized the legality of the drug test, Respondent should also understand that employees had the legal right to unionize. In determining the coerciveness of such a remark, the Board applies the objective standard of whether the remark reasonably tends to interfere with the free exercise of employee rights. The Board does not consider either the motivation behind the remark or its actual effect. *Miller Electric Pump & Plumbing*, 334 NLRB 824, 825 (2002); *Joy Recovery Technology Corp.,* 320 NLRB 356, 365 (1995), enfd. 134 F.3d 1307 (7th Cir. 1998). Respondent, through supervisor Friday, stated that it would not let the Union in. This statement constitutes a threat of futility which would reasonably restrain and coerce employees in the exercise of their Section 7 rights. See, e.g., *Commercial Erectors,* 342 NLRB No. 94, slip op. at 4, n. 4 (2004) (prediction that company will not go union constitutes a threat of futility).

b. The Section 8(a)(1) and (3) Allegation

In cases involving dual motivation, the Board employs the test set forth in *Wright Line, A Division of Wright Line, Inc.,* 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983). Initially, the General Counsel must establish by a preponderance of the credible evidence that antiunion sentiment was a "motivating factor" for the discipline or discharge. This means that General Counsel must prove that the employee was engaged in protected activity, that the employer knew the employee was engaged in protected activity, and that the protected activity was a motivating reason for the employer's action. *Wright Line, supra,*

251 NLRB at 1090. Unlawful motivation may be found based upon direct evidence of employer animus toward the protected activity. *Robert Orr/Sysco Food Services,* 343 NLRB No. 123, slip op. at 2 (2004). Alternatively, proof of discriminatory motivation may be based on circumstantial evidence, as described in *Robert Orr/Sysco Food Services, supra*:

> To support an inference of unlawful motivation, the Board looks to such factors as inconsistencies between the proffered reasons for the discipline and other actions of the employer, disparate treatment of certain employees compared to other employees with similar work records or offenses, deviations from past practice, and proximity in time of the discipline to the union activity. *Embassy Vacation Resorts,* 340 NLRB No. 94, slip op. at 3 (2003).

When the General Counsel has satisfied the initial burden, the burden of persuasion shifts to Respondent to show by a preponderance of the credible evidence that it would have taken the same action even in the absence of the employee's protected activity. If Respondent advances reasons which are found to be false, an inference that the true motive is an unlawful one may be warranted. *Shattuck Denn Mining Corp. v. NLRB,* 362 F.2d 466, 470 (9th Cir. 1966); *Limestone Apparel Corp.,* 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). However, Respondent's defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. *Merrilat Industries,* 307 NLRB 1301, 1303 (1992). Ultimately, the General Counsel retains the burden of proving discrimination. *Wright Line, supra,* 251 NLRB at 1088, n. 11.

Based upon a preponderance of the credible evidence, I find that General Counsel has sustained the initial burden of showing that Morfey's Union activity was a motivating factor for his discharge. Morfey was a 27-year employee of Respondent with an exemplary record. Businesses don't normally discharge excellent, long-term employees without a legitimate business reason. There is little dispute that Morfey engaged in Union activity and that Respondent was aware that Morfey was a Union sympathizer. Morfey's discharge occurred the same day that Respondent received his e-mail announcing that he was engaged in union activities. Morfey was told by his immediate supervisor that Respondent was not going to let a union in and was fired that day. This timing is strong evidence that Respondent was motivated by union animus in its abrupt discharge of Morfey. See, e.g., *Trader Horn of New Jersey*, 316 NLRB 194, 198 (1995); *Sawyer of Napa,* 300 NLRB 131, 150 (1990).

Respondent's handbook states its lawful preference to remain Union free. However, its handbook also states,

> [In families] black sheep are occasionally found. They are a discredit to a family and a business. If a helping hand fails to guide them along the right path, they are usually expelled from the family circle and are shunned by those who strive to preserve the better ways of life.

Respondent's specific animus for Morfey's Union activity, and its general animus against Union activity, provides ample evidence that antiunion sentiment was a motivating reason for Respondent's discharge of Morfey. The prima facie case is further buttressed by Respondent's failure to follow its own employee handbook and its feeble attempts to compare Morfey's conduct to other incidents of threats or violence. Respondent's disparate treatment of Morfey compared to other employees with similar work records or offenses adds to the strong prima facie case of discrimination. Realizing that Morfey had no prior record of discipline and that its own handbook provided for an oral warning, Respondent attempted to mischaracterize Morfey's damage to its door. Further, Respondent attempted to mischaracterize Morfey's attempt to

leave Houston's office as violent and completely ignored the fact the Friday had purposefully blocked Morfey's exit from the office. Even after Morfey asked Friday to move his chair, Friday refused to do so. Finally, after Morfey made an ambiguous comment about Friday having blocked his exit from Houston's office, Respondent mischaracterized the comment as a "terroristic" threat.

Thus, the burden shifts to Respondent to establish that the same action would have taken place in the absence of the employee's union activities. Where, as here, General Counsel makes out a strong prima facie case under *Wright Line*, the burden on Respondent is substantial to overcome a finding of discrimination. *Eddyleon Chocolate Co.*, 301 NLRB 887, 890 (1991). An employer cannot carry its *Wright Line* burden simply by showing that it had a legitimate reason for the action, but must "persuade" that the action would have taken place even absent the protected conduct. *Centre Property Management*, 277 NLRB 1376 (1985); *Roure Betrand Dupont, Inc.*, 271 NLRB 443 (1984).

In the instant case, Respondent contends that Morfey contacted the Union in an attempt to protect his job. There is no evidence that Morfey had any reason to suspect that his job was in jeopardy. Rather, the evidence shows that Morfey was concerned about random drug testing for himself and his fellow employees. He believed that he was making no progress with Respondent and, thus, sought Union support. Respondent further contends that Walcott is too smart to discharge an employee for union activity. I need not and do not credit that argument. Walcott knew that Morfey was an excellent, long-time employee. Houston, his labor relations director, did not recommend termination. Further, Houston's knowledge that Friday had purposefully blocked Morfey's exit is imputed to Walcott. The subject of the meeting was Morfey's request to have the drug-testing policy reviewed. According to Respondent, Walcott had two meetings that day with his managers but Respondent offered no documentary evidence, no notes, that any meetings took place. Further, while Walcott and his managers contend that Walcott said he "would sleep on it", there is no evidence that a tentative or final decision was made. Rather, Respondent's witnesses admit that Morfey's union activities were another "variable."

Thus, I find that Respondent did not persuade that Morfey would have been discharged absent his union activities. Rather, I find that Respondent's mischaracterizations of the evidence buttress the prima facie case that Respondent discharged its employee Dale Morfey because of his union activities.

Conclusions of Law

1. By threatening that the employer would not let the union in, Respondent violated Section 8(a)(1) of the Act.

2. By discharging employee Dale Morfey, Respondent violated Section 8(a)(1) and (3) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discriminatorily discharged Dale Morfey, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net

interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Respondent must also be required to expunge any and all references to its unlawful discharge of Morfey from its files and notify Morfey in writing that this has been done and that the unlawful discharge will not be the basis for any adverse action against him in the future. *Sterling Sugars, Inc.,* 261 NLRB 472 (1982).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Weldon, Williams & Lick, Inc., Ft. Smith, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   a. Threatening that it was futile for employees to support the Union because Respondent would not let the union in.

   b. Discharging employee Dale Morfey or any other employee because he supported the Union or engaged in other concerted activities.

   c. In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

   a. Within 14 days from the date of this Order, offer Dale Morfey full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

   b. Make Dale Morfey whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the Remedy section of the decision.

   c. Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Dale Morfey, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

   d. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

e. Within 14 days after service by the Region, post at its facility in Fort Smith, Arkansas copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2004.

f. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: October 5, 2005
San Francisco, California

Mary Miller Cracraft
Administrative Law Judge

[13] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT tell you it is futile to organize for Graphic Communciations Conference International Brotherhood of Teamsters, or any other Union, by telling you that we will not let the Union in.

WE WILL NOT discharge Dale Morfey or any other employee because he supported the Union or because he acted in concert with other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights.

WE WILL within 14 days from the date of the Board's Order, offer Dale Morfey full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Dale Morfey whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Dale Morfey and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discipline and discharge will not be used against him in any way.

WELDON, WILLIAMS & LICK, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Brinkley Plaza Building, 80 Monroe Avenue – Suite 350, Memphis, Tennessee 38103, Telephone 901–544–0011.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.